

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL  
DISTRICT, LOS ANGELES COUNTY  
OFFICE OF EDUCATION, LOS  
ANGELES COUNTY DEPARTMENT OF  
MENTAL HEALTH.

OAH CASE NO. 2010090444

ORDER DENYING MOTION TO  
DISMISS

On September 22, 2010, Los Angeles County Office of Education (LACOE), filed a Motion to Dismiss. OAH has not received a response from Student.

APPLICABLE LAW

Parents have the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) OAH has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act (IDEA). (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029 [hereafter *Wyner*].)

Settlement agreements are interpreted using the same rules that apply to interpretation of contracts. (*Vaillette v. Fireman’s Fund Ins. Co.* (1993) 18 Cal.App.4th 680, 686, citing *Adams v. Johns-Manville Corp.* (9th Cir. 1989) 876 F.2d 702, 704.) “Ordinarily, the words of the document are to be given their plain meaning and understood in their common sense; the parties’ expressed objective intent, not their unexpressed subjective intent, governs.” (*Id.* at p. 686.) If a contract is ambiguous, i.e., susceptible to more than one interpretation, then extrinsic evidence may be used to interpret it. (*Pacific Gas & Electric Co. v. G. W. Thomas Drayage & Rigging Co.* (1968) 69 Cal.2d 33, 37-40.) Even if a contract appears to be unambiguous on its face, a party may offer relevant extrinsic evidence to demonstrate that the contract contains a latent ambiguity; however, to demonstrate an ambiguity, the contract must be “reasonably susceptible” to the interpretation offered by the party introducing extrinsic evidence. (*Dore v. Arnold Worldwide, Inc.* (2006) 39 Cal.4th 384, 391, 393.)

The IDEA specifically states that nothing in the Act shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed. (20 U.S.C. § 1415(o); 34 C.F.R. § 300.513(c) (2006); Ed Code, § 56509.)

## DISCUSSION

Sometime prior to July 2010, Student was incarcerated and became a student at Eastlake Central Juvenile Hall School, operated by LACOE. An assessment for special education was requested, and LACOE performed a psycho-educational assessment. An IEP team meeting on July 8, 2010, determined that Student was not eligible for special education services.

On July 28, 2010, Mother filed a Request for Due Process (Complaint # 1) naming LACOE as the respondent. Mother was self-represented, but Complaint #1 was filed under cover letter by a Public Defender who was apparently assisting Mother. Complaint # 1 alleged that the assessment wrongly concluded Student was not eligible. Complaint # 1 cited Student's history of behavior problems and the fact that he was then being housed in the Special CARE Unit run by Los Angeles County Department of Mental Health (DMH) at Eastlake Central Juvenile Hall, where he was getting intensive treatment for behavior problems. Complaint # 1 alleged, in pertinent part, that LACOE's psycho-educational assessment should have determined Student eligible as emotionally disturbed. As a remedy, Complaint # 1 requested an independent assessment. Procedural violations were also alleged that are not pertinent here.

In August 2010, the Delinquency Court appointed counsel (hereafter Student's Counsel) to represent Student.

On September 7, 2010, a mediation was held regarding Complaint # 1, at which Public Defender appeared for Student. Student's Counsel did not appear. The matter settled and Complaint # 1 was withdrawn. The pertinent terms of the settlement were that LACOE would reassess Student. There was no release language in the mediated settlement agreement.

On September 13, 2010, Student's Counsel filed a Request for Due Process (Complaint # 2). Complaint # 2 named LACOE as a respondent and also named Los Angeles Unified School District (District) and DMH. Complaint # 2 does not make reference to Complaint # 1 and there is no indication that Student's Counsel was aware of Complaint # 1 or the settlement thereof. Complaint # 2, like Complaint # 1, alleged that LACOE's psycho-educational assessment should have determined Student eligible as emotionally disturbed. It also made additional allegations that LACOE should have made an AB 3632 referral of Student to be assessed by DMH. It also alleged that LACOE's assessment should have determined Student eligible as a student with a Specific Learning Disability. It sought the following remedies against LACOE: finding Student eligible as

Learning Disabled; funding an independent evaluation; referral to DMH under AB 3632; and evaluation for residential treatment. Complaint # 2 also made allegations against District and DMH that are not pertinent here.<sup>1</sup>

On September 22, 2010, LACOE moved to dismiss Complaint # 2, contending that the allegations had been settled by the mediated settlement of Complaint # 1.

LACOE's motion is denied. The mediated settlement agreement of Complaint # 1 contains no release language, nor did it state that the withdrawal of the case would be with prejudice. Therefore it did not preclude Parent from re-filing, even on identical issues. Moreover, Complaint # 2 states additional issues and seeks alternate remedies to those stated in Complaint #1.

### **ORDER**

LACOE's Motion to Dismiss is denied. The matter shall proceed as scheduled.

IT IS SO ORDERED.

Dated: September 30, 2010

/s/

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JUNE R LEHRMAN

Administrative Law Judge

Office of Administrative Hearings

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<sup>1</sup> DMH has brought a separate Notice of Insufficiency of Due Process Complaint which will be dealt with by separate Order.